

BUSINESS OCCUPATIONAL AND PROFESSIONAL LICENSE



From Scottsdale City Code

NOTICE TO TAXPAYERS

This booklet incorporates sections of the City Code of the City of Scottsdale as it relates to Business, Occupational and Professional licenses.

It is our hope that this booklet will assist you in understanding the tax law.

For any additional information or clarification please call (480) 312-2400.

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CHAPTER 16
LICENSES, TAXATION AND MISCELLANEOUS BUSINESS
REGULATIONS

ARTICLE II. BUSINESS LICENSE TAX

Sec. 16-16. General Definitions.

“Average number of employees” means the average number of persons employed in the applicant’s business, where the applicant has a fixed place of business, for the three-month period ending on the last day of the calendar quarter preceding the date of the application which average number is ascertained by determining the number of persons employed by the applicant on the business day nearest the fifteenth day of each month and dividing the sum thereof by three.

“Business” includes all activities or acts including professions, trades and occupations, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, but not casual activities or sales.

"Casual activity or sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this article.

"City" means the City of Scottsdale, Arizona, in its present incorporated form or in any later reorganized, consolidated, salaried or re-incorporated form.

"Engaged in business" means any business having a location within the City of Scottsdale.

"Gross receipts" means the total of amounts actually received or

receivable from sales and the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in "gross receipts" are all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" are the following:

- (a) Cash discounts allowed and taken on sales.
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold.
- (c) Any tax required by law to be included in or added to the purchase price and collected from the customer or purchaser.
- (d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as if refunded either in cash or by credit.
- (e) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them.
- (f) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded.

"Gross sales volume" means the total values of all properties sold by a real estate office.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the federal government, this state, or any political subdivision or agency of this state. For the purposes of this chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Sale" means any transfer, of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred by the seller who retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths, or a declaration or certification made under the penalty of perjury.

"Tax collector" means the Financial Services general manager or his designee or agent.

(Code 1972, s. 6-101)

Sec. 16-17. Purpose and effect of article; cumulative remedies.

(a) This article is enacted solely to raise revenue for municipal purposes, and is not intended for regulation.

(b) Persons required to obtain a Scottsdale transaction privilege tax license for transacting and carrying on business in this city shall be relieved from the payment of any business license tax. Persons possessing either a Scottsdale transaction privilege license or a Scottsdale business license shall remain subject to all other revenue and regulatory provisions of the ordinances of the city.

(c) All remedies prescribed by this article shall be cumulative and supplemental and the use of one (1) or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

(Code 1972, s. 6-102)

Sec. 16-18. Effect of article on past actions.

(a) Neither the adoption of this article nor its superseding of any portion of any other ordinance of the city shall in any manner be construed to affect prosecution for violation of any other ordinance committed prior to the effective date hereof, nor be construed as a waiver of any license or any penal provision applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by any ordinance to be posted, filed, or deposited and all rights and obligations shall continue in full force and effect.

(Code 1972, s. 6-118)

Cross reference-Effect of adoption of Code on prior offenses and punishments, s. 1-4.

Sec. 16-19. Violations.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor.

(Code 1972, s. 6-110)

Cross reference-Penalty for violations of Code, s. 1-8.

Sec. 16-20. Exclusion of gross income of persons deemed not engaged in business.

(a) For the purposes of this section, the following definitions shall apply:

- (1) "Federally exempt organization" means an organization which has received a determination of exemption under 26 U.S.C. Section 501(c) and rules and regulations of the commissioner of internal revenue pertaining to same, but not including a "governmental entity", "non-licensed business", or "public education entity".
- (2) "Governmental entity" means the federal government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing: provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.
- (3) "Non-licensed business" means any person conducting any business activity for gain or profit, whether or not actually

realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this chapter.

- (4) "Proprietary club" means any club which has qualified as an exempt club under the provisions of 26 U.S.C. Section 501(c)(7), (8), and (9) notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.
- (5) "Public educational entity" means any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.

(b) Nothing in this article shall be deemed or construed to apply to any person engaging in any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State of Arizona from payment of such taxes as prescribed by this article. The following will be exempted from payment of this tax:

- (1) Any entity defined in Section 16-20 (s) (1) through (5).
- (2) Individuals who engage in a home occupation as defined by the zoning ordinance, Section 3.100, Paragraph 43.

(c) Any person claiming an exemption pursuant to this Section shall file a sworn statement with the tax collector stating the facts upon which exemption is claimed, and in the absence of such statement substantiating the claim, such person shall be liable for the payment of the taxes imposed by this Article. The tax collector shall, upon proper showing contained in the sworn statement, file the sworn statement in lieu of issuing a license to such person claiming exemption under this Section without payment to the city of the license tax required by this article. The tax collector, after giving notice and a reasonable opportunity for hearing to a person claiming exemption under this

Section, may revoke their exempt status upon information that the licensee is not entitled to the exemption as provided herein and collect such license fees as would be owing had no exemption been claimed.

(Code 1972, s. 6-116)

Cross reference-home occupation defined, App. B, s. 3.100.

Sec. 16-2I. Constitutional apportionment provision.

(a) None of the license taxes provided for by this article shall be so applied as to create an undue burden upon interstate commerce or be in violation of the equal protection and due process clauses of the constitutions of the United States and the State of Arizona.

(b) In any case where a license tax is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce or be in violation of such constitutional clauses, the licensee or applicant may apply to the tax collector for an adjustment of the tax. Such application may be made before, at, or within six (6) months after payment of the prescribed license tax. The applicant shall, by sworn statement and supporting testimony, show the method of business and the gross volume or estimated gross volume of business and such other information as the tax collector may deem necessary in order to determine the extent, if any, of such undue burden or violations.

(c) The tax collector shall then conduct an investigation, and, after having first obtained the written approval of the city attorney, shall fix as the license tax for the applicant, an amount that is reasonable and nondiscriminatory, or if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the tax collector shall have the power to base the license tax upon a percentage of gross receipts or

any other measure which will assure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax as prescribed by this article. Should the tax collector determine the gross receipts measure of license tax to be the proper basis, the tax collector may require the applicant's business to provide a sworn statement of the gross receipts and pay the amount of license tax therefore, provided that no additional license tax during any one (1) calendar year shall be required after the licensee shall have paid any amount equal to the annual license tax as prescribed in this article.

(Code 1972, s. 6-117)

Sec. 16-22. Powers and duties of the tax collector.

(a) It is the duty of the tax collector to enforce the provisions of this article. The Chief of Police shall render such assistance in the enforcement of the provisions as may be required by the tax collector or the City Council.

(b) The tax collector shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this article have been complied with. The tax collector, or any police officer, shall have the power and authority to insure each business has the applicable license posted in a conspicuous location. Any person having such license theretofore issued, who willfully fails to post the license, is guilty of a misdemeanor and subject to the penalties provided for by the provisions of this article, and the tax collector shall cause a complaint to be filed against any person found to be violating any provision herein.

(c) The tax collector may not make rules and regulations not inconsistent with the provisions of this article as may be necessary in the enforcement of the provisions of this article.

(d) The tax collector shall have the power, for good cause shown, to extend the time for filing any required sworn statement or application for a period not exceeding thirty (30) days, and in such case to waive any penalty that would otherwise have accrued.

(Code 1972, s. 6-103)

Sec. 16-23. Imposition of license tax; evidence of engaging in business.

(a) There is imposed upon any person engaging in business within the city, license taxes in the amounts prescribed by this article. No person shall engage in any business in the city without first having procured a license from the city and paying the tax prescribed or without complying with the applicable provisions of this article.

(b) This section shall not be construed to require any person to obtain a license prior to engaging in business within the city if such requirement conflicts with applicable statutes of the United States or of the state. Persons not so required to obtain a license prior to engaging in business within the city nevertheless shall be liable for payment of the tax imposed by this article.

(c) When any person shall by use of signs, circulars, cards, telephone book or newspapers, advertise, hold out, or represent that said person is engaged in business in the city, or when any person holds an active license or permit issued by a governmental agency for conducting business in the city. and such person fails to deny by a sworn statement given to the collector that business is not being conducted in the city, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that business is being conducted in the city.

(Code 1972, s. 6-104)

Sec. 16-24. Amount of license tax; time of payments.

(a) Every person engaging in business where the amount of the license tax to be paid is not measured by gross receipts shall pay a license tax based on the average number of employees as follows:

Service Business

<u>Number of Employees</u>	<u>Annual License Tax</u>
0-2	\$ 50.00
3-7	\$ 75.00
8-11	\$ 100.00
12-25	\$ 125.00
26-100	\$ 150.00
101-200	\$ 175.00

(b) In lieu of the license tax imposed by subsection (a) of this section, any real estate broker or agent shall pay a license tax based on the gross sales volume as follows:

Real Estate Brokers

<u>Gross Sales Volume</u>	<u>Annual License Tax</u>
\$ 0 - 1,000,000	\$ 50.00
1,000,001 - 5,000,000	\$ 75.00
5,000,001 - 10,000,000	\$ 100.00
10,000,001 - 20,000,000	\$ 125.00
20,000,001 - 30,000,000	\$ 150.00
30,000,001 - 40,000,000	\$ 175.00
40,000,001 - and over	\$ 200.00

(c) Unless otherwise specifically provided, all license taxes under the provisions of this chapter shall be paid in advance on an annual basis. The taxes shall be due on or before the first business day of February of the renewal year.

- (1) License taxes covering new operations commenced after the first day of January, may be prorated for the balance of the year, but not less than one calendar quarter, and are due and payable prior to commencement of business.
- (2) Recovery of taxes owed shall be limited to a maximum of the current license tax due plus the tax due for four prior years.

(Code 1972, s. 6-105)

Sec. 16-25. Application for first license.

(a) Upon a person making a nonrefundable twelve dollar (\$12.00) application fee for the first license to be issued under this article for a newly established business, or home occupation exemption, such person shall furnish to the tax collector a sworn statement, upon a form provided by the tax collector, setting forth the following information:

- (1) The exact nature or kind of business for which a license is requested;
- (2) The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residence of the owners of same;
- (3) In the event that application is made for the issuance of a license to a person doing business under a fictitious name,

the application shall set forth the names and places of residences of those owning said business;

- (4) In the event that the application is made for the issuance of a license to a corporation or a partnership, the application shall include the names and places of residences of the officers or partners thereof;
- (5) In all cases where the amount of license tax to be paid is measured by gross receipts, the application shall set forth such information as may be required and as may be necessary to determine the amount of the license tax to be paid by the applicant;
- (6) Any further information which the tax collector may require to enable the issuance of a license applied for.

(b) It is a condition precedent to issuance of a license that the applicant furnish evidence of compliance with all applicable state and city laws, rules and regulations.

(c) If the amount of the license tax to be paid by the applicant is measured by gross receipts, an estimate shall be made of the gross receipts for the period to be covered by the license to be issued. Such estimate, if accepted by the tax collector as reasonable, shall be used in determining the amount of license tax to be paid by the applicant, provided, however, the amount of the license tax so determined shall be tentative only, and such person shall, within thirty days after the expiration of the period for which such license was issued, furnish the tax collector with a sworn statement, upon a form furnished by the tax collector, showing the gross receipts during the period of such license, and the license tax for such period shall be finally ascertained and paid in the manner provided by this article for the ascertaining and paying of renewal license taxes for other businesses, after deducting from the payment found to be due, the amount paid at the time such

first license was Issued.

(d) The tax collector shall not issue to any such person another license for the same or any other business, until such person shall have furnished a sworn statement and paid the license tax as required by this article.

(Code 1972, s. 6-106)

Sec. 16-26. False statements in applications.

No person shall knowingly or intentionally misrepresent to any officer or employee of the city any material fact in procuring a license under this article.

(Code 1972, s. 6-119)

Sec. 16-27. Contents of license.

(a) Every person required to have a license under the provisions of this article shall make application as prescribed for the same to the tax collector, and upon the payment of the prescribed license tax, the tax collector shall issue to such person a license which shall contain the following information:

- (1) The name of the person to whom the license is issued.
- (2) The business licensed.
- (3) The place where such business is to be transacted and carried on.
- (4) The date of the expiration of such license.

- (5) Such other information as may be necessary for the enforcement of this article.

(Code 1972, s. 6-107)

Sec. 16-28. Posting and display of licenses.

(a) Any licensee engaged in business at a fixed place of business in the city shall keep the license posted in a conspicuous place upon the premises where engaging in business.

Sec. 16-29. License transferable at tax collector's discretion.

(a) No license issued pursuant to this article shall be transferable, provided that, where a license is issued authorizing a person to transact and carry on a business at a particular place, the tax collector may upon application authorize the licensee to engage in business under the same license at another location to which the business is to be moved. Provided further that transfer, whether by sale or otherwise, to another person under such circumstances creates ownership after the transfer that is substantially similar to the ownership existing before the transfer. For the purpose of this subsection, stockholders, bondholders, partnerships or other persons holding an interest in a corporation or other entity herein defined to be a person are regarded as having the real or ultimate ownership of such corporation or other entity.

(b) A separate license shall be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location, and each license shall authorize the licensee to engage in the business licensed thereby at the location or in the manner designated in such license.

Warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this article shall not be deemed to be separate places of business or branch establishments.

(Code 1972, s. 6-109)

Sec. 16-30. Renewal and duplicate licenses.

(a) In all cases, the applicant for the renewal of a license shall submit to the tax collector, a sworn statement for ascertaining the amount of the license tax to be paid by the applicant, upon a form to be provided by the tax collector, setting forth such information concerning the applicant's business during the preceding year as may be required by the tax collector to determine the amount of the license tax to be paid by said applicant pursuant to the provisions of this article.

(b) A duplicate license may be issued by the tax collector to replace any license previously issued which has been lost or destroyed upon the licensee filing a statement of such fact, and at the time of filing such statement of such fact, and at the time of filing such statement paying to the collector a duplicate license fee of ten dollars.

(Code 1972, s. 6-110)

Sec. 16-31. Statements and records; failure to file.

(a) No statements shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the city from collecting by appropriate action such sum as is actually due and payable hereunder. Such statement and each of the several items therein contained shall be subject to audit and verification by the tax collector

as may be necessary in order to verify or ascertain the amount of the license fee due.

(b) All persons subject to the provisions of this article shall keep complete records of business transactions, including sales, receipts, purchases, number of employees, and other expenditures, and shall retain all such records for examination by the tax collector. Such records shall be maintained for a period of at least four years. No person required to keep records under this section shall refuse to allow authorized representatives of the tax collector to examine said records at reasonable times and places.

(c) If any person fails to file any required statement within the time prescribed, or if after demand therefore made by the tax collector the person fails to file a corrected statement, or if any person subject to the tax imposed by this article fails to apply for a license, the tax collector may determine the amount of license tax due from such person by means of such Information as he may be able to obtain. If the tax collector is not satisfied with the information supplied in statements or applications filed, the amount of any license tax due may be determined by means of any available information.

(d) If such determination is made, the tax collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Post Office at Scottsdale, Arizona, postage prepaid, to the person's last known address. Such person may, within forty-five days after the mailing or serving of such notice, make application in writing to the tax collector for a hearing on the amount of the license tax. If such application is made, the tax collector shall cause the matter to be set for hearing within fifteen days. The tax collector shall give at least ten days notice to such person of the time and place of hearing in the manner prescribed above for serving notices of assessment. The tax collector shall consider all evidence produced, and shall make findings thereon, which shall be final. Notice of such findings shall be served upon the

applicant in the manner prescribed above for serving notices of assessment.

(Code 1972, s. 6-111)

Sec. 16-32. Confidentiality of information.

It is unlawful for the tax collector or any person having an administrative duty under the provisions of this article to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a license, or pay a license tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement except the original application, or to permit any statement, or copy of any statement, or any book containing any abstract or particulars thereof to be seen or examined by any person; the following exceptions allow for disclosure;

- (1) The City Council may authorize an examination of any billing statement or audit of a specific taxpayer made pursuant to this chapter by authorized agents of the federal government, the state of Arizona, or any political subdivisions.
- (2) The tax collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this chapter relative to the taxing ordinances of that county, city, or town.
- (3) Successors, receivers, trustees, personal representatives, executors, guardians, administrators and assignees, if directly interested, may be given information by the tax collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required

to be paid.

- (4) Upon a written direction by the city attorney or other legal advisor to the city designated by the City Council, officials or employees of the city may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report, and the amount of such delinquent and unpaid tax, penalty, or interest, to a private collection agency having a written collection agreement with the city.
- (5) The tax collector may provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. section 42-1452 relating to the assessment and collection of intermunicipal taxes.
- (6) The tax collector may provide information regarding the enforcement and collection of taxes imposed by this chapter to any governmental agency with which the city has an agreement.
- (7) The disclosure of the names and addresses of persons to whom licenses have been issued, and the general type or nature of the business.
- (8) The disclosure of general statistics regarding taxes collected or business done in the city.

(Code 1972, s. 6-112)

Sec. 16-33. Delinquent tax penalties; collection; tax a debt.

(a) Any licensee who fails to renew his license or any applicant who fails to apply for his license on or before the date provided in Section 16-24(c), shall be deemed to be operating without a license following

such due date, and shall be subject to all penalties imposed under this chapter against persons required to be licensed and operating without a license. The non-license status may be removed by payment of an annual license fee in the amount of one hundred fifty percent (150%) imposed under 16-24 (A & B), and the payment of a nonrefundable application fee required under 16-25 A.

(b) No license or sticker, tag, plate or symbol shall be issued, nor one which has been suspended or revoked shall be reinstated or reissued to any person, who at the time of applying therefore, is indebted to the city for any delinquent license taxes, unless such person, with the consent of the tax collector, enters into a written agreement with the city, through the tax collector, to pay such delinquent taxes, plus twelve percent simple annual interest upon the unpaid balance, in monthly installments, or more often, extending over a period of not to exceed one year. In any agreement so entered into, such person shall acknowledge the obligation owed to the city and agree that, in the event of failure to make timely payment of any installment, the whole amount unpaid shall become immediately due and payable and that the current license shall be revocable by the tax collector upon thirty days notice. In the event legal action is brought by the city to enforce collection of any amount included in the agreement, such person shall pay all costs of suit incurred by the city or its assignee, including a reasonable attorney's fee. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided by this article, but no penalties shall accrue on account of taxes included in the agreement, after the execution of the agreement, and the payment of the first installment and during such time as such person shall not be in breach of the agreement.

(c) The amount of any license tax interest and penalty imposed by the provisions of this article shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction, for the amount of any delinquent license tax

interest and penalties.

(Code 1972, s. 6-113)

Sec. 16 34. Refund of overpayments.

No refund of an overpayment of taxes imposed by this article shall be allowed in whole or in part unless a claim for refund is filed with the tax collector within a period of six months from the last day of the calendar month following the period for which the overpayment was made, and all such claims for refund of the amount of the overpayment shall be filed with the tax collector on forms furnished and in the manner prescribed by him. Upon the filing of such a claim, and when he determines that an overpayment has been made, the tax collector may refund the amount overpaid. Refunds will not exceed 48 months from the date of notification of said overpayment.

(Code 1972, s. 6-114)

Sec. 16-35. Appeal from decisions of the tax collector.

(a) Any person aggrieved by any decision of the tax collector with respect to the amount assessed as a tax or who believes that any activities engaged in are not subject to the license tax required by this article shall pay the amount of such assessment or tax claimed due before the delinquent date and shall at that time give notice, in writing, to the tax collector that all or part of such payment is made under protest and shall in the notice give the grounds and reasons for such protest and that a certain part thereof or that the total sum is protested.

(b) Within ten days after receipt of such protest, the tax collector shall reply, in writing, to the last known mailing address of the

taxpayer stating whether the tax applied is to be changed as requested and giving reasons for the decision.

(c) If the taxpayer is dissatisfied, appropriate action in any court of competent jurisdiction within the State of Arizona may be taken to recover payments made under protest. Court action shall be taken within forty-five days after the tax collector has mailed a reply as required. Failure to take court action within the required forty-five day period shall make the protest null and void.

(d) If court action has been taken by the taxpayer, all subsequent payments due shall be paid on or before the due date. However, if each tax form is plainly marked "paid under protest", such subsequent payment shall be treated as part of the original protest until such time as court remedies have been exhausted or the court action has been withdrawn by the taxpayer.

(Code 1972, s. 6-115)

Secs. 16-36-16-50. Reserved.

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